

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAS VIRGENES UNIFIED SCHOOL
DISTRICT AND VENTURA COUNTY
SPECIAL EDUCATION LOCAL PLAN
AREA.

OAH Case No. 2016020876

ORDER GRANTING MOTION TO
DISMISS VENTURA COUNTY SELPA
AS A RESPONDENT

On February 18, 2016, Parent on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing naming Las Virgenes Unified School District and Ventura County Special Education Local Plan Area (SELPA). On February 25, 2016, District filed with OAH a Notice of Insufficiency contending that Student's complaint was not sufficient. On March 7, 2016, OAH issued an order finding Student's complaint was not sufficient.

On March 17, 2016, Student filed with OAH an amended complaint naming District and SELPA. The complaint contends that Student was, and is, being denied a free appropriate public education because he has not been provided any support to participate in an extracurricular activity, the freshman baseball team.

On March 24, 2016, SELPA filed a motion to dismiss on grounds that SELPA was not a proper party because (a) it has no duty to provide Student with a free appropriate public education, and (b) the amended complaint contains no allegations related to SELPA. Student has not filed a response to SELPA's motion.

Applicable law and Discussion

Although special education law does not provide a summary judgment procedure, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction and easily provable. Here, the sole issue is whether SELPA is a proper party, a matter easily proven without a formal summary judgment procedure.

In general, IDEA due process hearing procedures extend to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services

to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.) Thus, although a SELPA may fit the definition of “public agency” set forth in the IDEA, to be a proper party for a due process hearing the SELPA must also be involved in making decisions regarding a particular student.

Determination of whether the SELPA is a “public agency involved in any decisions regarding” Student requires a review of California statutes that define the role of SELPA’s. Education Code sections 56195, 56195.1, and title 2, California Code of Regulations, section 60010 set forth the role of SELPA’s. Specifically, a SELPA, meaning the service area covered by a special education local plan, shall administer the allocation of funds, and local plans submitted under Education Code section 56205.

Nothing in Education Code sections 56195 and 56195.1 renders a SELPA individually responsible to provide a free appropriate public education to, or make education decisions about, a particular student. The duty to administer the allocation of funds and local plans is not a duty to provide FAPE to individual students or a duty to make educational decisions for individual students.

In the present matter, Student’s complaint contains *no facts* related to SELPA.¹ The complaint contains specific allegations involving actions by District personnel.

Under the authority cited above, the IDEA places responsibility on a public agency, including a SELPA, if that public agency was involved in making decisions about that particular student. Student has not alleged any facts in the complaint, nor cited to any authority, that support a finding that SELPA is a proper party to this action.

Because Education Code sections 56195 and 56195.1 do not establish that the SELPA had an independent duty to provide a FAPE to Student, and the SELPA was not the entity making educational decisions about Student, the SELPA is entitled to dismissal because it is not a proper party under Education Code section 56501 subdivision (a).

¹ The only reference to SELPA is in the caption.

ORDER

SELPA's motion to dismiss SELPA is GRANTED. Ventura County SELPA is dismissed. Matter shall proceed against Las Virgenes Unified School District only.

DATE: April 7, 2016

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings